

2-24-2004

DISCLOSURE OF SOCIAL SECURITY NUMBERS. UNFAIR COMPETITION ACTIONS. INITIATIVE STATUTE.

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SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

September 21, 2004

RECEIVED

SEP 24 2004

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TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPOSERS (04301)

FROM: Brianna Lierman
BRIANNA LIERMAN
ELECTIONS ANALYST

SUBJECT: FAILURE OF INITIATIVE #1040

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named INITIATIVE STATUTE filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has failed.

TITLE: DISCLOSURE OF SOCIAL SECURITY NUMBERS. UNFAIR
COMPETITION ACTIONS.

SUMMARY DATE: 02/24/04

PROPOSER: James Wheaton



SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

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February 24, 2004

TO: ALL REGISTRARS OF VOTERS/COUNTY CLERKS AND PROPONENTS
(04076)

FROM:

Brianna Lierman

Brianna Lierman
Elections Analyst

SUBJECT: **INITIATIVE #1040**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**DISCLOSURE OF SOCIAL SECURITY NUMBERS.
UNFAIR COMPETITION ACTIONS.
INITIATIVE STATUTE.**

The proponent of the above-named measure is:

James Wheaton
Law Offices of James Wheaton
1736 Franklin Street, 9th Floor
Oakland, CA 94612

(510) 208-4554

ELECTIONS DIVISION

1500 11TH STREET - 5TH FLOOR • SACRAMENTO, CA 95814 • (916) 657-2166 • WWW.SS.CA.GOV

#1040

**DISCLOSURE OF SOCIAL SECURITY NUMBERS.
UNFAIR COMPETITION ACTIONS.
INITIATIVE STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required:..... 373,816
California Constitution, Article II, Section 8(b)
2. Official Summary Date: Tuesday, 02/24/04
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (EC §336)..... Tuesday, 02/24/04
 - b. Last day Proponent can circulate and file
with the county. All sections are to be filed at the
same time within each county (EC §336, 9030(a)) Friday, 07/23/04
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (EC §9030(b)). Wednesday, 08/04/04

(If the Proponent files the petition with the county on a date prior to 07/23/04, the
county has eight working days from the filing of the petition to determine the total
number of signatures affixed to the petition and to transmit the total to the
Secretary of State) (EC §9030(b)).
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures,
and notifies the counties..... Friday, 08/13/04*
 - e. Last day for county to determine total number of qualified
voters who signed the petition; and to transmit certificate
with a blank copy of the petition to the Secretary of State
(EC §9030(d)(e)) Tuesday, 09/28/04

*Date varies based on the date of county receipt of verification.

INITIATIVE #1040

Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 08/13/04, the last day is no later than the thirtieth day after the county's receipt of notification).(EC §9030(d)(e)).

- f. If the signature count is more than 411,198 or less than 355,125 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 355,125 and 411,198 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures.....Friday, 10/08/04*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c))..... Tuesday, 11/23/04

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 10/08/04, the last day is no later than the thirtieth working day after the county's receipt of notification) (EC §9031(b)(c)).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033) Saturday, 11/27/04*

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 2, 2004, GENERAL ELECTION: This initiative must be certified for the ballot 131 days before the election (June 24, 2003). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions with county elections officials by April 16, 2004. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 25, 2004.

*Date varies based on receipt of county certification.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555

Facsimile: (916) 324-8835
Phone: (916) 324-5464

February 24, 2004

FILED
in the office of the Secretary of State
of the State of California

Kevin Shelley
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

FEB 24 2004

KEVIN SHELLEY, Secretary of State

By Branna Lierman
Deputy Secretary of State

RE Initiative Title and Summary
SUBJECT: DISCLOSURE OF SOCIAL SECURITY NUMBERS.
UNFAIR COMPETITION ACTIONS. INITIATIVE STATUTE.
FILE NO. SA2003RF0075, Amdt. #1-S

Dear Mr. Shelley:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

Tricia Knight
TRICIA KNIGHT
Initiative Coordinator

For BILL LOCKYER
Attorney General

TK/cw
Enclosures

Date: February 24, 2004
File No.: SA2003RF0075,
Amdt. #1-S

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

DISCLOSURE OF SOCIAL SECURITY NUMBERS. UNFAIR COMPETITION ACTIONS.

INITIATIVE STATUTE. Prohibits businesses from disclosing consumer social security numbers for profit. Allows disclosure of social security number with consumer's express permission, to complete an authorized financial transaction or as required or permitted by federal law. Authorizes unfair competition actions to remedy violations of this measure and constitutional right of privacy. Requires that monies obtained from unfair business practices be used to remedy harm, to prevent/redress unfair business practices, or by court-approved fund for specified purposes. Allows any remaining monies and all civil penalties to be used for any purpose. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure could result in additional state and local government court and enforcement costs, and in additional state and local government revenues from civil and other penalties.

SA2003RF0075,
Amot. #1-S

Law Offices of James Wheaton

California Building
1736 Franklin Street, 9th Floor
Oakland, California 94612

510/208-4554 Fax: 510/208-4562

30 December 2003

The Honorable Bill Lockyer
Attorney General of California
California Department of Justice

RECEIVED
DEC 30 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

By Facsimile (Sacramento)

Attn: Trisha Knight, Initiative Coordinator

Re: Initiatives

Dear Mr. Lockyer and Ms. Knight:

As delivered to your office today via overnight FedEx, please find an amended version of the initiative I previously submitted – No. SA2003RF0075 (indicated as 11.3 on the text of the initiative itself) – bearing the suggested title “California Privacy Protection Act.” For ease of reference, the following changes were made:

Removal of underline formatting in 17300. (Text remains.)
Surplus definition in Section 17300 removed; definitions renumbered accordingly.
Changed text of “Amendment” section in Section 8.

Thank you for your assistance during this process. I may be contacted at the address above.

Cordially,



James Wheaton

Enclosure

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
THE CALIFORNIA PRIVACY PROTECTION ACT

Section 1: Findings The People of California declare that the right to privacy is a personal, fundamental and inalienable right protected by Article 1, Section 1 of the Constitution of the State of California.

The People find that:

1. Big businesses invade our privacy when they sell and share our personal information without our permission.
2. Widespread commercial trafficking in private personal information and poor business practices in protecting such information threaten our Constitutional right of privacy.
3. The use of electronic information technology increases the likelihood that individual privacy rights are being violated on a massive scale, resulting in identity theft, financial fraud, and uncontrolled exposure of private personal information.
4. Current laws are too weak and do not give Californians enough control or remedies to prevent the selling or sharing of our personal information or other invasions of privacy by big businesses.
5. The purpose of the California Privacy Protection Act is to combat the misuse, and theft, of Californians' personal private information, especially personal financial information, by prohibiting the commercial sharing of our information without our permission, and by providing individuals with remedies to defend this fundamental right.
6. Businesses should have the ability to share the minimum amount of confidential personal information, with our permission when necessary to process transactions requested by consumers and for such other appropriate purposes as preventing fraud and for regulatory or law enforcement purposes, subject to the protections of this Act.

Section 2: California Privacy Protection Act

This Act shall be known and may be cited as the California Privacy Protection Act.

Section 3: California Constitutional Right

This Act defines and provides specific remedies to implement the existing right of privacy as guaranteed by Article 1, section 1 of the California Constitution. This Act is not the exclusive statement of those rights, definitions or remedies.

Section 4: Article 7 of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code (commencing with section 17150) is added to read:

17150 Privacy Protection Act

This article shall be known and may be cited as the California Privacy Protection Act.

17153 Social Security Numbers; Prohibition on Sale and Use

No business shall either seek to profit or actually profit from disclosing any consumer's social security number to any other person or business, nor use a social security number as an identifier for a consumer, save and except:

- (a) with express permission from the consumer whose social security number is disclosed, consistent with all the terms of section 17300(h), or
- (b) to the extent necessary to effect, administer, or enforce a transaction requested or authorized by the consumer whose social security number is disclosed, or
- (c) to the extent required by state or federal law, or permitted by a federal law that preempts this section.

17170 Remedies

In addition to the remedies afforded by section 17203 or any other provision of law, any person who successfully brings a private cause of action under any section of this division on behalf of him or herself, its members, or the general public, shall receive the

greater of actual damages or statutory damages up to the amount of penalties imposed upon a violator of the Do Not Call Registry, plus any costs and reasonable fees.

Section 5: Chapter 5 of Part 2 of Division 7 is amended to read:

Section 17200 is amended to read:

17200 Unfair Competition; prohibited activities

As used in this chapter, unfair competition shall mean and include, but is not limited to any unlawful, unfair or fraudulent business act or practice, any business act or practice that violates the Constitutional Right of Privacy in Article 1, Section 1 of the California Constitution, including but not limited to the privacy rights in Article 7 (commencing with section 17150) of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code, and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Section 17203 is amended to read:

17203. Injunction; orders or judgments

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to:

- (a) prevent the continuing, future or renewed use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or
- (b) to restore to any person in interest any money or property, real or personal, which may have been acquired, or to remedy any harms caused by means of such unfair competition, or

(c) require any such person to surrender any and all financial gains obtained, or costs avoided, by any unlawful, unfair, or fraudulent business act or practice in violation of this chapter, to be used to remedy the harms or types of harms caused by the act or practice, or to a court-approved fund appropriate to the circumstances of the particular action, or to the State of California which may use the funds for state and local law enforcement to prevent and redress unfair business practices.

Section 17204 is amended to read:

17204. Actions for relief; prosecutors

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of him-, her- or itself, its members or the general public. Any money that is recovered that is not returned or returnable to persons who have been harmed, or used to remedy any harms caused by the act or practice or otherwise disposed of in accordance with section 17203, shall be deposited into an account or accounts of the state or the local agency and may be used for any purpose including law enforcement to prevent and redress unfair business practices.

17206.7 **Civil Penalties; Enforcement**

Any civil penalties collected pursuant to sections 17206 or 17536 shall be deposited into an account or accounts of the state or the local agency and may be used for any purpose including law enforcement to prevent and redress unfair business practices.

Section 17535 is amended to read:

17535. Injunctive relief; orders; prosecutor; complainant

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of him-, her- or itself, its members or the general public. Any money that is recovered that is not returned or returnable to persons who have been harmed, or used to remedy any harms caused by the act or practice or otherwise disposed of in accordance with section 17203, shall be deposited into an account or accounts of the state or the local agency and may be used for any purpose including law enforcement to prevent and redress unfair business practices.

Section 6: Chapter 6 of Part 2 of Division 7 of the Business and Professions Code (commencing with section 17300) is added to read:

Section 17300 Definitions.

For purposes of Article 7 of Chapter 4 of Part 2 of Division 7 of this Code (commencing with section 17150):

- (a) "Business" means any person or entity regulated or otherwise subject to the provisions of Division 7 of the Business and Professions Code (commencing with Section 16000) which has a place of business in or does business with any resident or business in California. "Business" shall not include any political campaign, party, candidate or committee, or any other entity engaged solely in political, candidate, ballot measure or issue campaigns.
- (b) For purposes of section 17153, "business" shall not include any charity or other tax-exempt organization recognized as such under Internal Revenue Code section 501(c), except subsection (6) thereof, or any unaffiliated business with fewer than 25 employees and less than \$1,000,000 in annual gross revenue. To "seek to or actually profit from disclosing any consumer's social security number to any other person or business" includes selling, leasing, trading or otherwise receiving any consideration of any kind in exchange for the disclosure of any consumer's social security number, whether alone or in combination with any other information about the consumer, and does not include using or revealing a social security number in conjunction with law enforcement to detect or prevent fraud, or as required to comply with any law.
- (c) For purposes of section 17160, "any information. . .collected by a business during the course of soliciting or fulfilling the terms of a commercial transaction, or any

information the business derives therefrom about the consumer” includes all information about the consumer that is linked to any personal identifying information and which is or was: provided by the consumer; obtained from any other person in the course of the transaction; created or amended in the course of the transaction; or, obtained from any other source about the consumer.

(d) For purposes of section 17170, “statutory damages up to the amount of penalties imposed upon a violator of the Do Not Call Registry” means a statutory award of damages in an amount not greater than the civil penalty imposed upon a violator of the Do Not Call Registry administered by the United States Federal Trade Commission under 15 C.F.R. section 310.4(b)(iii); “reasonable fees” includes reasonable fees and expenses of investigators, experts or attorneys incurred on behalf of or paid by the plaintiff in investigating or bringing the action.

(e) For purposes of section 17300(g), “personal identifying information” has the same meaning as that in section 1798.92(c) of the Civil Code, that is about the consumer and (1) is provided by a consumer to a business, (2) is created or amended in the course of any transaction by or for the consumer, or (3) obtained by the business from any other source. Personal identifying information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personal identifying information.

(f) “Consumer” means an individual resident of this state, or that individual's legal representative, or any individual who is offered or solicited for or who obtains or has obtained, any product, service or consideration from a business in California. For purposes of this division, an individual resident of this state is someone

whose mailing address, other than an Armed Forces Post Office or Fleet Post Office address, is located in this state. "Consumer" means an actual, prospective or solicited consumer, customer or client.

(g) For purposes of section 17153, "necessary to effect, administer, or enforce" means that the disclosure is required to: carry out the transaction or the product or service of which the transaction is a part; record or maintain the consumer's account in the ordinary course of providing the service or product; administer benefits or claims relating to the transaction or the product or service; publish a listing of the consumer's name, address or telephone number in a regularly published directory of names, addresses or telephone numbers if the consumer is afforded a means to refuse such listing; share personal identifying information between a nonprofit organization recognized under section 501(c) of the Internal Revenue Code and an entity that issues or administers an affinity credit card for the nonprofit organization.

(h) For purposes of sections 17153, "permission" may be obtained from a consumer only by strict and complete compliance with all of the following:

(1) the permission is requested in a conspicuous notice, separate and distinct from any other notice, request, application or form;

(2) the permission clearly and simply informs the consumer of the precise permission requested, including:

(a) the information that will be disclosed;

(b) the name(s) of all persons to whom the information will be disclosed;

- (c) every commercial use that the person(s) to whom the information will be disclosed will make of the information and for what period of time;
 - (d) the period of time the permission will be in effect.
- (3) the consumer has a right not to give such permission and to modify or revoke it at any time;
- (4) the permission given is fair, reasonable and informed, in light of the information provided in the request and the use of the information;
- (5) no consideration of any kind is offered in exchange for the permission;
- (6) the permission is expressed by a form that, at minimum, includes the following in not less than 12 point type, with bracketed type indicating variable content:

IMPORTANT PRIVACY INFORMATION FOR CALIFORNIANS

California consumers have privacy rights that are stronger than those under Federal law to control the sharing of some personal information by businesses.

Unless you voluntarily agree to waive your privacy rights, we cannot share your personal or financial information with any non-affiliated company. The only exceptions are to complete a transaction that you request, to administer your account or policy, to comply with state or federal law, or to enforce legal rights.

We cannot discriminate against you based on your decision not to waive your privacy rights.

IF YOU DO NOT WANT US TO SHARE YOUR PERSONAL OR FINANCIAL INFORMATION WITH OUTSIDE COMPANIES, DO NOT FILL OUT THIS FORM

() I authorize you to share my personal or financial information with nonaffiliated companies: [name(s)]. I understand that this may result in my receiving unsolicited offers for products or services. This permission is in effect until rescinded by me or [date].

Name: _____

Account or Policy Number(s): _____

Signature: _____

Date: _____

To voluntarily waive your privacy rights, fill out, sign and send back this form to us. You may want to make a copy for your records.

You may rescind this authorization at any time by writing to us at any time, or by calling this toll free number (xxx) xxx-xxxx [or by contacting us electronically through the following internet option: xxxxx@xxx.xxx].

- (i) For purposes of section 17203, “a court-approved fund appropriate to the circumstances of the particular action” shall mean funds controlled by nonprofit organizations or foundations to support projects that will benefit the persons or interests harmed by the act or practice or similarly situated persons or interests, or to promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.
- (j) Nothing in this Act shall impose a requirement upon a business for which federal law imposes or prohibits a requirement in a manner that preempts state authority under the Constitution of the United States.
- (k) Definitions herein that incorporate definitions found in other provisions of law incorporate said provisions as of the date this Act is adopted unless the specific definition permits incorporation of later or superseding provisions.

17301 Conflict

To the extent that this division conflicts with any provision of any other state or local law, statute, or regulation, this division is the express will of the People and the terms of this Act shall prevail.

Section 7: Severability

If any part of any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that part or as to that person or circumstance does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 8: Amendment

This Act may be amended by a vote of the people or by a law that furthers this Act's purposes in protecting California consumers or preventing and redressing unfair competition if passed by majority of each house of the Legislature and signed by the Governor. Any amendment to this Act passed by the Legislature and approved by the Governor that in any manner, directly or indirectly, reduces the rights contained herein or the remedies available to any person, shall not take effect unless approved by the voters at the next general election. Such amendment shall be immediately subject to a declaratory relief action to determine whether it meets both standards in this section and if so, whether a vote of the People is required. Venue for such an action shall be in the County of Sacramento.

Section 9: Effective Date

This Act shall take effect on January 1, 2005.

Section 10: Conflicting Measures

In the event that any other law be passed before this Act takes effect, or any other initiative or referendum measure shall appear on the same statewide election ballot, relating to the provisions of this Act, the provisions of this Act shall be deemed to express the will of the People and the provisions of such other laws shall be deemed to be in conflict with this Act. In the event that this Act shall receive a greater number of affirmative votes than any other ballot measure the terms of which conflict with any term in this Act, the provisions of this Act shall go into effect in their entirety and the provisions of any other ballot measure shall be null and void.